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Lena Foljanty

Translators: Mediators of Legal Transfers

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Lena Foljanty

Translators: Mediators of Legal Transfers

Circulation of legal knowledge, ideas, norms and practices has taken place throughout legal history, shaping legal experiences in different corners of the world. Over the past couple of years, approaches to the study of such circulations have changed radically. Legal historians have adopted approaches from cultural studies and transnational history in order to gain a deeper understanding of the complexities inherent in these processes.[1]

One approach that has proven fruitful in this regard is the concept of cultural translation. During the last three decades, translation studies as well as cultural studies have moved closer to each other. In translation studies, a cultural turn has led to emphasising the creativity that is inherent in any translation and to ask how it is influenced by the specific context in which it is produced.[2] Cultural studies adopted the concept of translation at the same time, using it to describe processes of adapting foreign knowledge in a broader sense. Understood this way, translation is no longer restricted to the translation of a text from one language into another. It encompasses the adaptation of practices, ideas, and norms into a new cultural framework – in time, in space or between different social groups.[3]

In legal historical analysis, the concept of cultural translation invites us to look at the processes of adopting foreign ideas and norms not from a bird's eye perspective, but rather from within.[4] Translation means to develop an idea of the other and to reformulate these ideas in order to make them accessible in the new context. It is a process in which meaning shifts, decisions are taken and negotiations take place. What transformations occur during this process? And what parameters influence these transformations?

All articles in this *Focus* deal with translators. Translators, as understood here, are not only those who reconfigure a text from one language into another. Rather, translators are all actors who link foreign knowledge with local practices and understandings. They might be in charge of legislation, as was the diocesan bishop Diego Romano, taking up the decrees of the Council of Granada in order to create norms that would apply to the Mexican context (Moutin). They might be judges and thus observers of daily practices and problems, reporting them back to the crown that is in charge of legislation, as the *oidor* Alonso de Zorita did (Egío). They might be activists, like the Columbian indigenous leader Manuel Quintin Lame, making legal knowledge usable for his struggle (Escobar). And they might be scholars, refining knowledge for certain communities, as in the instances of Ibrāhīm al-Bājūrī, Eduard Sachau and Johann Heinrich Kratzenstein (Kooria and Beck). They all were acting within and moving between contexts, they were mediating and negotiating every single step that was taken, and in doing so, they actively participated in shaping the legal knowledge of their time.

The translators treated in this *Focus* are not only situated in different epochs and spaces, but they are also situated differently regarding their positions, aims and addressees. The *Focus* explores different constellations of translating, and by juxtaposing different constellations it invites us to broaden our understanding of how translation creates, stabilizes, subverts or resists dominant discourses and practices. While Diego Romano seems to make rather pragmatic choices (Moutin), the case of Lame (Escobar) deals with translation as a tool of struggle for acknowledgement and belonging. The cases of Zorita (Egío) and al-Bājūrī (Kooria) show how translation might be used to question dominant discourses within one's own legal or scientific community. Translation might at the same time give a voice to those who have none, as again in the case of Zorita (Egío), or empower the powerless, as in the case of Kratzenstein's »Institutes du Droit Civil pour les Dames« (Beck). In contrast to these

1 Duve (2012); Duve (2014); Focus in Rg 22 (2014).
2 Lefevre / Bassnett (1990); Niranjana (1992); Venuti (2012).
3 Bachmann-Medick (2009).
4 Foljanty (2015).

cases, in which translation was intended protect the weak, the case of Sachau emphasizes the necessity of looking at the role that translations played in reinforcing colonial rule, where translation served as a means of domination (Kooria).

Dealing with the circulation legal knowledge between different cultural and social contexts is not new in legal history; looking at it through the lens of cultural translation is. Theorization is ongoing. The *Focus* offers several aspects that contribute fruitfully to this theorization. It shows that the various techniques of taking up and translating foreign knowledge are worth a closer look, be it in order to gain a precise insight into the subtle adaptations and choices that were made in order to make legal knowledge workable in the new context (Moutin) or to gain insights into the translator's understanding and attitude regarding the foreign context in question and to figure out how this attitude influenced the translation practice (Egío and Beck). All authors of the *Focus* draw on the fact that the process of translating legal knowledge from one context to another is »not an innocent act of cultural mediation« but always »political«, as Kooria puts it emphatically, and that the shifts of meaning that occur in the process of cultural translation can only be understood when what Escobar calls »cultural baggage«, i. e. a broader context of socio-political norms and values, is taken into account.

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